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August 1, 2003

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The Honorable Michael K. Powell
 Chairman
 Federal Communications Commission
 445 12 Street S W
 Washington, D C 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Re: Rule and Regulations Implementing the Telephone Consumer Protection Act of 1991
CG Docket No 02-278, FCC 03-153, 68 FR 44144 (July 25, 2003)

Dear Chairman Powell

America's Community Bankers ("ACB")¹ respectfully requests the Federal Communications Commission ("FCC") to reconsider certain elements of the final rule² issued to implement the Telephone Consumer Protection Act of 1991 ("TCPA"). ACB strongly opposes the restrictions contained in the final rule that would not permit membership associations, such as ACB, to send advertisements via fax except with express written consent.

Section 64.1200, in part, will require a written consent in order to send faxes that contain unsolicited advertisements, even to members of associations. The current regulation, effective until August 25, 2003, permits the sending of faxes if there is an "established business relationship." By eliminating that provision in the final rule, consent will be required to be provided prior to the faxing of all documents containing any material advertising the commercial availability or quality of any property, goods, or services. The FCC will permit electronic or digital signatures as evidence of consent, but associations may not send a fax to seek consent.

This change will place onerous administrative and economic burdens on associations by requiring "expressed written consent" from members prior to sending a fax about goods or services. Often these same members have joined associations for the purpose of receiving goods and services at member prices. We urge you to investigate this arduous restriction of legitimate commercial and membership activity.

The new FCC interpretation of the TCPA prohibits any person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or services which is transmitted to any person without that person's prior express invitation or permission." As a result, the "established business relationship" is no longer sufficient to permit faxes to be transmitted to our members. Associations and businesses are

¹ America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

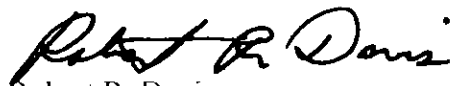
² 68 Fed. Reg. 44144 (July 25, 2003).

now faced with the challenging administrative, legal, economic and record keeping ramifications that will arise because of these changes.

The changes, which are scheduled to go into effect on August 25, 2003, will create a significant economic and labor-intensive burden for the association community. The TCPA would even require written consent for faxes pertaining to events such as annual meetings and conventions, and fundraisers held in conjunction with these meetings. As you know, associations rely on faxes as a prime source of communication and marketing to meet the needs of their members.

Thank you for considering this very important matter. I would be happy to meet with FCC staff to provide further information. We stand ready to work with the FCC on this matter. If you have any questions, please contact the undersigned at (202) 857- 5088 or rdavis@acbankers.org.

Sincerely,



Robert R. Davis
Executive Vice President and
Managing Director, Government Relations

cc The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Edelstein

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